



MEMORANDUM

TO: JUDICIARY COMMITTEE, HOUSE OF REPRESENTATIVES

FROM: SHELLI WEISBERG, LEGISLATIVE DIRECTOR

DATE: JUNE 14, 2005

RE: WHY ACLU-MI OPPOSES THE ELIMINATION OF PRELIMINARY EXAMS IN MOST FELONY CASES

HB 4796 through 4800 and SB 542 through 545 are designed to eliminate preliminary examinations in the majority of felony cases (except only when requested by the prosecutor). The stated purpose of the proposed legislation is to reduce jail overcrowding; allow law enforcement officers to return to their primary public safety duties more efficiently; and thereby create a more cost effective criminal justice system.

The ACLU, however, believes that preliminary exams help ensure fundamental fairness to both sides throughout the criminal justice process. Moreover, we believe that the reasons put forth to justify this measure are not supportable.

Some goals of the proposed legislation will actually be undermined by these bills or could be achieved in ways that do not compromise due process rights.

1. **Michigan would be among the small minority of states that do not provide for some form of pre-trial screening between the prosecution and the defense.**
 - Eliminating preliminary exams would put Michigan in the embarrassing position of having the lowest standards for screening before a person may be made to stand trial for a felony than any other state in the country.
 - Concerns about efficiency can be addressed through pre-exam conferences which are now used in some Michigan courts.

- A pre-exam conference can, in some cases, resolve issues so there is no need for a preliminary exam. Therefore, unnecessary time is wasted, and police can be back on street sooner and the court can operate more efficiently.

2. **Preliminary exams are an important screening/discovery procedure.**

- Allows judges to weed out cases which are not supported by probable cause.
- Allows the defense to identify information needed from the prosecution or from private investigation in order to prepare the defense.
- Allows both sides to assess the basic credibility of key witnesses in the case.
- Preliminary exams help to alleviate the imbalance of investigative resources and legal tools (e.g. getting a subpoena during an investigation) between the prosecution and the defense.

3. **Eliminating preliminary exams would actually increase the costs, resources and time spent on trials by the court and law enforcement.**

- District and circuit judges are opposing these bills because they will result in a tremendous change in work loads which will clog circuit court dockets.
- Because police stations are generally housed next door to district courts, little travel time is necessary for a preliminary exam. This would not be true if an officer needs to go to a circuit court which would be miles away.

4. **Preliminary exams play an important role in reducing the number of trials and overcrowded jails.**

- Preliminary exams will often show both sides the strength and weakness of their arguments to pave the way for meaningful settlement negotiations.
- As such, it avoids trials that would occur where neither side has had an opportunity to see the witness testify before trial. Trials are considerably more expensive and time consuming than preliminary exams.

5. **Preliminary exams provide a valuable truth-seeking function.**

- Allows attorneys to get a record of witnesses' testimony when recollections are likely to be fresh.
- If a witness testifies for the first time at trial, which is usually many months after the crime, his or her recollection is not likely to be as accurate as if the witness testified within a few weeks of the incident.
- If the witness has testified at the preliminary examination and has been subjected to cross-examination, that testimony is generally admissible at trial. This is especially helpful if witness has died or disappeared during the months leading up to trial.
- As a result of conducting a preliminary exam, the evidence introduced may be weaker than originally thought, causing the judge to either dismiss the case or release the accused on a reduce bond. The release of these wrongly incarcerated individuals eases jail overcrowding and saves the state money.

6. **Preliminary exams protect an accused person's right to a fair trial.**

- Preliminary exams function as a way to adequately inform defendants of the basis for the charge—a right protected under the Due Process Clause.
- It is during this process that defendants are sometimes found to be either innocent or overcharged.
- Preliminary exams provide for meaningful discovery required under court rules in cases. A trial must be based upon more than just a police report—they are not always 100% accurate.
- Under the new proposal, only the prosecutor has the right to request a preliminary exam.

If you have any questions please feel free to contact either Shelli Weisberg at 248.535.7112 or Stephanie Ellis at 517. 372.8503.